

**New Britain Steel Erectors, Inc. and International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, Local Union No. 15.**  
Case 34-CA-5460

March 27, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Local Union No. 15, on December 20, 1991, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing against New Britain Steel Erectors, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1), (5), and 8(d) of the National Labor Relations Act by failing since on or about May 13, 1991, to continue in full force and effect all the terms and conditions of a collective-bargaining agreement it has with the Charging Party and with International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Local 424 (collectively referred to as the Union). Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 27, 1992, the General Counsel filed a Motion for Summary Judgment. On February 29, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that, by letter dated January 21, 1992, the Regional attorney for Region 34 notified the Respondent that unless an answer was received by close of business on January 28, 1992, a Motion for Summary Judgment would be filed. The Respondent did not file an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a Connecticut corporation with an office and place of business in Plainville, Connecticut, has been engaged as a contractor providing steel erection and related construction services. During the 12-month period ending November 30, 1991, a representative period, the Respondent, in the course and conduct of its business generally, provided services valued in excess of \$50,000 for Shepard Steel Co., Inc., an enterprise within the State of Connecticut that is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

About August 26, 1987, the Respondent, a construction industry employer, entered into a collective-bargaining agreement with the Union covering a period from June 29, 1987, to June 24, 1990, in which it recognized the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit, consisting of employees who perform the work described in the "Jurisdiction of Work" provision of the parties' agreement. The agreement was to continue in effect from year to year after the expiration date unless timely notice was given at least 4 months prior to the expiration of a contract year. The Respondent's recognition of the Union has been embodied in successive year to year contracts, the most recent of which were effective for the periods June 25, 1990, to June 24, 1991, and from June 25, 1991, to June 24, 1992.<sup>1</sup>

Since on or about May 13, 1991, the Respondent unilaterally and without the Union's consent has failed to continue in full force and effect all the

<sup>1</sup> Par. 9 of the complaint alleges that the Respondent has recognized the Union since September 28, 1987, without regard to whether the Union had attained majority status under Sec. 9(a) of the Act. In view of this allegation, and the fact that the Respondent is a construction industry employer, it is clear that the bargaining relationship between the Respondent and the Union was established pursuant to Sec. 8(f) of the Act. Under the principles of *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), an 8(f) signatory union does not acquire full 9(a) status based solely on an employer's adoption of an 8(f) agreement. Accordingly, we find that the Union is the limited exclusive representative of the Respondent's unit employees. Id. at 1386-1387.

terms and conditions of its most recent collective-bargaining agreement, which terms and conditions are mandatory subjects of bargaining. By engaging in such conduct, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1), (5), and 8(d) of the Act, as alleged.

#### CONCLUSIONS OF LAW

By unilaterally, and without the Union's consent, failing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to adhere to all terms and conditions of its collective-bargaining agreement with the Union, and to make employees whole for any loss of earnings or benefits they may have suffered as a result of the Respondent's failure to continue in full force and effect the terms and conditions of that agreement, in the manner described in *Ogle Protection Service*, 183 NLRB 682 (1970), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, New Britain Steel Erectors, Inc., Plainville, Connecticut, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) unilaterally and without the consent of International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Local Unions No. 15 and No. 424, failing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union.

(b) in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions set forth in its collective-bargaining agreement with the Union.

(b) Make whole unit employees for any loss of earnings or benefits they may have suffered as a result of the Respondent's failure, since on or about May 13, 1991, to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to ensure compliance with this Order.

(d) Post at its facility in Plainville, Connecticut, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally and without the consent of International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, Local Unions No. 15 and No. 424, cease giving full force and effect to all the terms and conditions of our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all terms and conditions set forth in our collective-bargaining agreement with the Union, and WE WILL

make whole unit employees for any loss of earnings or benefits they may have suffered as a result of our failure since on or about May 13, 1991, to continue in effect all terms and conditions of that agreement, with interest.

NEW BRITAIN STEEL ERECTORS, INC.